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IN THE SUPREME COURT
STATE OF ARIZONA

PETITION TO AMEND RULE 1(D)(4))
IN THE ARIZONA RULES OF) Supreme Court No. XXX
PROTECTIVE ORDER PROCEDURE,)
SUPREME COURT NO. R-06-0032)

Pursuant to Rule 28 of the Rules of the Supreme Court, Mike Palmer, a person "interested . . . in the amendment . . . of a court rule" respectfully petitions this Court to amend Rule 1(D)(4) of the Arizona Rules of Protective Order Procedure to prevent discrimination against defendants as can happen (and has happened) now.

I. Preamble. Ironically, Rule 1(D) proper, titled "Court Security," requires the court to ensure ALL parties in an Order of Protection Procedure (or Injunction Against Harassment) are treated with "fairness" and "dignity" during the court process. Despite this mandate, Rule 1(D)(4) is both unfair and ignominious to defendants. By singling them out, it allows the court to punish them without cause simply for being a defendant.

When a defendant is held without cause, it is an unlawful seizure, a violation of one's 4th Amendment right. This petition requests an amendment to the Rule to ensure defendants who are found "not guilty" cannot be punished by the court.

II. Background. A cursory survey of the laws governing Orders of Protection or Harassment Against Injunction, along with the Arizona Rules of Protective Order Procedure regarding same, demonstrates a woefully one-sided, prejudicial process that favors the petitioner-

plaintiff from the start. These procedures are horribly unfair uphill battles foisted on defendants at the mere whim of an uncontested plaintiff abusing the system at an ex parte petition. While the court cannot change the legislated laws which bias the procedures, it can, in keeping with its stated goal of Rule 1(D), eliminate the indignity to defendants its own internal Rule currently allows.

III. Analysis. I first became aware of the inequity of Rule 1(D)(4) when a friend found herself the defendant in a bogus Injunction Against Harassment hearing brought by another woman. That it was bogus was demonstrated when the court quashed the Injunction at the end of the contested hearing. (Ironically, the plaintiff used an Injunction Against Harassment to harass the defendant.)

Nevertheless, after the court ruled the defendant did not harass the plaintiff (in effect, finding the defendant "not guilty,") the court seized "the defendant for a period of time after the plaintiff was excused" per Rule 1(D)(4). Thus the defendant, whose good name had been cleared, was now forced to suffer further indignity and embarrassment at the hands of the court!

This is not right. There is no cause for this, and I submit there is no lawful basis for detaining an acquitted defendant. If a court finds a defendant did not violate the law, then the defendant should be free to go. Period.

If the plaintiff continues to have any (now unwarranted) concern for their well being after the court has ruled there is no basis for such concern, then the plaintiff can remain in the court room gallery. There is no need to punish the defendant for having the misfortune to be the target of a meritless claim by the plaintiff. This is adding insult to injury. The defendant has suffered enough without being further humiliated by the court.

IV. Proposed change: Therefore, I suggest Rule 1(D)(4) should be amended to read "Following a hearing, the court may direct the defendant to remain in the courtroom for a period of time after the plaintiff is excused ONLY in cases where an Order of Protection or an Injunction Against Harassment remains in force."

IV. Request for Expedited Adoption. In the interest of justice, I request expedited adoption of this amended Rule as permitted by Supreme Court Rule 28(G).

I also request expedited adoption because, as practiced now, this Rule constitutes an unlawful 4th Amendment seizure against innocent defendants.

RESPECTFULLY SUBMITTED this 7th day of January 2010.

By Mike Palmer

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